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**FILED**

OCT 16 2012

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF CALIFORNIA**

**LAILA KIA,**

Plaintiff,

vs.

**The California Public Employees'  
 Retirement System (CalPERS), and  
 Rahim A. Kia, an individual.**

Defendants.

Civil Case No.:

**C12-5317**

**COMPLAINT:  
 Federal Claims**

- 1) ERISA (COBRA Violations)  
 29 U.S.C. § 1132) and 29 U.S.C. 1166,

**State Pendent Claims**

- 2) Intentional Infliction of Emotional  
 Distress  
 3) Fraud  
 4) Negligent Misrepresentation  
 5) Intentional Interference with  
 Prospective Advantage  
 6) Negligent Interference with  
 Prospective Advantage  
 7) Request for Declaratory Relief-Hold  
 Harmless

**JURY DEMANDED**

**PRELIMINARY STATEMENT**

1. The Plaintiff is an Iranian woman that is the victim of both cultural abuse and oppression that designate and treat women as property of men and second class or no-class citizens. The

1 cultural and emotional abuse of such standards were transferred and transported to the US by the  
2 Defendant Rahim Kia when he moved himself and his family to the US in about 1987. This is a  
3 case involving a long-term relationship between the Plaintiff and the Defendant Rahim Kia that  
4 started with a marriage in Iran in 1979. Defendant Rahim Kia engaged in a long term pattern  
5 and scheme of abuse, fraud and other conduct to cause emotional distress to the Plaintiff.  
6 Among the acts described in this complaint was an effort by the Defendant to interfere with  
7 Plaintiff's access to her health insurance benefits and her rights under the retirement plan of  
8 which she was a qualified beneficiary.  
9

10  
11 2. To compound the abuse and oppression sustained by her former abusive husband,  
12 CalPERS, the agency that manages the retirement and health benefits of retired workers that  
13 worked for California public agencies, failed and refused to provide the Plaintiff with all notices  
14 concerning her health insurance as required by law. As a result of the conduct of CalPERS and  
15 or Rahim Kia or both independently or acting together, Plaintiff Kia has been deprived of her  
16 rights to COBRA insurance coverage after CalPERS learned of the Qualifying Event. This  
17 litigation seeks to redress the numerous wrongs imposed upon the Plaintiff by the Defendants.  
18

#### 19 JURISDICTION AND VENUE

20 3. This Court has jurisdiction pursuant to 28 USC §§ 1331 and 1343(3) for claims brought  
21 under the United States constitution and federal laws and under 28 USC § 1367 for Plaintiff's  
22 state claims.  
23

24 4. Venue lies in this District pursuant to 28 USC § 1391(b). The events giving rise to this  
25 complaint occurred primarily in Alameda County or the damages sustained by the plaintiff  
26 occurred in Alameda County, California.  
27  
28

#### PARTIES

1 5. Plaintiff, Lailia Kia, (aka "Laylia Kia") is an Iranian born women who was married to  
2 Rahim A. Kia in May 1979 in Iran. Ms. Kia came to the USA in the 80's as wife of Rahim Kia  
3 and lived as husband and wife until separated in 1995. The parties obtained a status only divorce  
4 in 2001 in Yolo County California. Ms. Kia holds US citizenship.

6 6. Defendant Rahim A. Kia was educated in the United States and obtained a PhD in  
7 engineering and travels back and forth between the US and Iran. Mr. Kia owns property in  
8 California and uses a US mailing address for various business and personal matters. Mr. Kia  
9 alleges he is retired and receives retirement benefits from The California Public Employees'  
10 Retirement System ("CalPERS") and identifies himself as the primary employee benefit plan  
11 participant. Ms. Kia was a Qualified Beneficiary under the Plan as defined below.

13 7. Defendant The California Public Employees' Retirement System ("CalPERS") is  
14 believed to be a California corporation located and doing business in the County of Alameda at  
15 1340 Treat Boulevard Walnut Creek, CA 94597 and its website states that " we provide  
16 retirement and health benefits to more than 1.6 million public employees, retirees, and their  
17 families and more than 3,000 employers."

#### 19 **FACTUAL ALLEGATIONS**

##### 20 ***CalPERS Failure to Provide COBRA Notices and Failure to Respond to Written Inquires.***

21 8. At some point in the past, at a date Plaintiff is unaware of at this time, Defendant Rahim  
22 Kia enrolled in the retirement and health plans of his employer CalTRANS in or about 1987. At  
23 the time of his enrollment, Ms. Kia did not receive any of the notices concerning the retirement  
24 plan and any notices of reporting requirements. Ms. Kia and the minor children of Mr. Kia were  
25 enrolled in the plan as qualified beneficiaries under the plan.

26 9. In or about 1995, Mr. Kia retired from CalTRANS and CalPERS became the employer  
27 responsible for administration of the retirement and health benefits under the employer's  
28



1 retirement plan. In or about 1995, Mr. Kia and Ms. Kia had separated. Mr. Kia, Ms. Kia and the  
2 minor children continued on the health insurance plan as provided by CalPERS. Mr. Kia  
3 continued to use the mailing address of Ms. Kia for the period after the separation and the  
4 address was changed as Ms. Kia moved or changed addresses. Ms. Kia did receive separate  
5 insurance coverage cards in her name, but otherwise all notices concerning the plan were sent to  
6 Mr. Kia.

8 10. In or about October 2001, Mr. Kia and Ms. Kia obtained a status only dissolution. Ms.  
9 Kia, not proficient in English and having only a high school education did not completely  
10 comprehend the notion of a status only divorce and assumed, as the family court judge told her,  
11 that they were still married. After the status only dissolution, nothing of significance changed.  
12 Defendant Rahim Kia continued to receive the whole of the retirement benefits and continued to  
13 include the Plaintiff and the children on the CalPERS health insurance plan.

15 11. However, unbeknownst to Ms. Kia, the court order of October 2001 of the status only  
16 dissolution was never reported to CalPERS. Instead, Mr. Kia continued to assure Ms. Kia that  
17 she and the children were covered under his plan. Neither CalPERS nor Mr. Kia provided Ms.  
18 Kia, as a Qualified Beneficiary (29 U.S.C. § 1167(3)(A)(i) (defining "qualified beneficiary" as,  
19 inter alia, "the spouse of the covered employee[.]"), of any notice requirements on when and how  
20 to notify CalPERS of any Qualifying Event, both are terms defined by the plan.

22 12. In or about September 2011, Mr. Kia turned 65 years of age and thus became eligible for  
23 Medicaid and Medicare. Coverage under the CalPERS health benefits of the retirement plan  
24 terminated, as this was a Qualified Event. Pursuant to the plan rules and COBRA, all Qualified  
25 Beneficiaries under the plan were entitled to notice of termination of coverage and eligibility for  
26 COBRA coverage. Ms. Kia was not notified of the termination of coverage by CalPERS and  
27 CalPERS never provided notice of eligibility or any other information.

1 13. Ms. Kia was never provided notice of COBRA eligibility and CalPERS never responded  
2 to her efforts to open an appeal of the decision that Ms. Kia was ineligible for COBRA. On  
3 numerous occasions, Ms. Kia contacted CalPERS in writing and requested copies of any notices  
4 sent to her and other information on the plan. CalPERS never responded with any information  
5 and never perfected her appeal of the determination that she was not eligible for COBRA  
6 notification.  
7

8 **FIRST CAUSE OF ACTION (CALPERS)**

9 **ERISA (COBRA VIOLATIONS)**  
10 **29 U.S.C. § 1132) and 29 U.S.C. 1166,**

11 14. Plaintiff Laylia Kia incorporates all above allegations herein by reference.

12 15. Under 29 U.S.C. § 1166, Plaintiff Laylia Kia was entitled to notice at the time of  
13 commencement of coverage under the plan of the rights provided under such the plan. In  
14 addition, Plaintiff Kia was entitled to notice of eligibility of COBRA coverage within 14 days of  
15 CalPERS learning of a qualified event. Further and in addition, CalPERS is required to respond  
16 to any written inquiries seeking information and other items concerning the plan, notices issued  
17 and any other information concerning the rights of the Qualified Beneficiary under the plan.  
18

19 16. Defendant CalPERS failed to provide Plaintiff Kia with any of the required noticed  
20 regarding her rights under the plan at any time and CalPERS failed to provide Plaintiff Kia with  
21 any COBRA notices or notices of eligibility or denial of eligibility within the required statutory  
22 timeframes. CalPERS further failed and refused to respond to Plaintiff's written request for  
23 information concerning the plan, copies of any notices and correspondence CalPERS alleged  
24 were sent to the Plaintiff and CalPERS failed and refused to respond to Plaintiff's request to  
25 appeal any determination by CalPERS that Plaintiff was not eligible for COBRA coverage.  
26  
27  
28

1 17. Plaintiff contends that the above acts are some and not all of the failures of CalPERS to  
2 comply with the notice requirements of 29 U.S.C. § 1166 and that Plaintiff Kia is entitled to  
3 statutory damages of \$ 110 per day for each day that CalPERS has failed and refused to provide  
4 all required notices to Plaintiff Kia from the date of Mr. Kia's enrolment in the plan in 1987  
5 through the present and continuing until said notices are provided according to law. As of the  
6 date of filing said estimate is approximately \$ 1,084,050.00.  
7

8 18. Plaintiff further contends that she is entitled to other relief as the court deems proper,  
9 including, the right to recover benefits due to her under the terms of his plan, to enforce her  
10 rights under the terms of the plan, or to clarify her rights to future benefits under the terms of the  
11 plan.  
12

13 **SECOND CAUSE OF ACTION (RAHIM KIA)**

14 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (2001-PRESENT)**

15 19. Plaintiff Laylia Kia incorporates all above allegations herein by reference.  
16

17 20. Plaintiff alleges that Defendant Rahim Kia has engaged in a continuous scheme and  
18 course of conduct to inflict distress upon the Plaintiff. While this conduct originated during the  
19 marriage (not the basis of this action), the conduct continued through the present. As a result of  
20 Defendant's actions, Plaintiff has had to consult and obtain psychiatric treatment and her official  
21 status is that of an abused and battered spouse/battered spouse syndrome. The history and  
22 factual discussion of her experiences with Defendant are summarized in a Declaration of her  
23 treating physician, Dr. Benjamin Kaufman, M.D. and attached hereto as Exhibit A and  
24 incorporated into this Complaint by reference. The declaration is not intended to be a  
25 comprehensive summary of every act of extreme and outrageous conduct upon the Plaintiff by  
26 the Defendant Kia.  
27  
28



1        21. The Defendant Kia has effectively exercised a campaign of terror against the Plaintiff  
2 since the parties divorced in 2001. The Defendant Kia has used trickery to obtain money from  
3 the Plaintiff and obtain her property. Plaintiff did not want to live in Iran as she found the culture  
4 oppressive for women, despite being an Iranian. At one point, Plaintiff tricked the Plaintiff into  
5 returning to Iran for a family event and a chance for her to visit her family that still lives there.  
6 When Plaintiff attempted to leave the country on her own freewill, the Defendant effectively  
7 kidnapped her and prevented her from exiting the country. Despite the fact that the parties had  
8 long ago divorced, Defendant reported to the Iranian authorities that "his wife" was attempting to  
9 leave the country without his authorization. Defendant then executed false papers alleging that  
10 his "wife" has property that belonged to him and issued a complaint to prevent her departure.  
11 Iranian police at the airport physically apprehended the Plaintiff under the direction of the  
12 Defendant as she attempted to leave the country against her former husband's approval. She was  
13 handled physically and 'ruffed-up' by the police as the Defendant had told the police very  
14 negative and disgraceful things about the Plaintiff. In order to leave the custody of the police  
15 and the country, Defendant demanded that the Plaintiff sign an irrevocable power of attorney  
16 over her real property so that he could sale the property to himself. The Plaintiff executed the  
17 documents under fear of further violence and under duress that she would not be released by  
18 Defendant to return to the US.

22        22. When the Plaintiff returned to the US distraught, the Defendant's campaign of  
23 harassment and terror continued when the Defendant learned that the Plaintiff had been forced to  
24 sale the property she received as a gift from her father as her only means of salvaging her dignity  
25 and her property. When the Defendant learned of the sale of the property he was irate and  
26 continued and continues to make threats directly and indirectly toward the Plaintiff. He has  
27 further vowed that if she should ever return to Iran, he will forbid her from ever returning to the  
28

1 US as he will put a stop on her exist papers as he did before. As a result of the threats and the  
2 threats of violence, Plaintiff is no longer able to return to Iran to visit any remaining family  
3 members. The threats are continuous and regular.  
4

5 23. Whenever the Plaintiff attempts to exercise her rights and or free herself from the conduct  
6 of the Defendant, the Defendant Kia does something to harass or cause the Plaintiff further  
7 emotional distress and or act with an intentional disregard for the possibility of causing  
8 emotional distress upon the Plaintiff. In or about September 2011, Defendant Kia learned that at  
9 age 65 his heath insurance benefits through CalPERS would terminate, as he was eligible for  
10 Medicaid. Defendant Kia was aware that Plaintiff Kia was a qualified beneficiary entitled to  
11 notices under the plan, changes in the plan and notice of COBRA coverage eligibility. At some  
12 point in anticipation of forthcoming notices concerning the changes to eligibility to coverage  
13 under the plan, the Defendant notified CalPERS of a change of address of record (previously  
14 some notices had been going to Plaintiff at her residence in Berkeley since about 2010). The  
15 Defendant then changed the address on all health insurance notices so that Plaintiff would not  
16 receive any heath insurance notices, cards or statements. He arranged for the items to go to his  
17 daughter (who was estranged from the Plaintiff).  
18  
19

20 24. In addition to intentionally having Plaintiff kidnapped in Iran and acting to interfere with  
21 her health insurance coverage, Defendant would systematically harass and haze the Plaintiff by  
22 telling her and others that their adult son is not mentally disabled (despite begin determined to  
23 be mentally disabled by the US government and his treating healthcare provider) and or that if he  
24 is mentally disabled, she made him in that condition so that she can collect \$ 600.00 a month in  
25 benefits for caring for him.  
26  
27

28 25. Still further, the Defendant has exploited the educational disparity between the parties  
and has exploited Plaintiff's frail and fragile mental and physical heath and conditions.



1 Defendant has routinely tricked the Plaintiff into incurring large sums of debt to lend him money  
2 for the stated purposes of supporting their daughter or the son or in an effort to help the son get  
3 well. Only after receiving promises that he would repay the money to the Plaintiff since he  
4 understood she had no money and was obtaining a loan from a family friend would the  
5 Defendant say that he had no intentions of repaying the money. In the alternative he would  
6 require her to come to Iran and work in his office at a rate of \$ 2000.00 as a condition to get the  
7 money back.  
8

9 26. Plaintiff contends that the above acts are extreme and outrageous conduct with the intent  
10 to cause, or with reckless disregard for the probability of causing, emotional distress upon the  
11 Plaintiff.  
12

13 27. Plaintiff further contends that she suffers extreme or severe emotional distress; and that  
14 the defendant's extreme and outrageous conduct was the actual and proximate cause of the  
15 plaintiff's extreme or severe emotional distress.  
16

17 28. Plaintiff contends that Defendant's acts were intentional and or of such a careless  
18 disregard for the possibility of causing emotional distress upon the Plaintiff that she is entitled to  
19 punitive damages in no less than \$ 500,000.00 dollars.  
20

### 21 THIRD CAUSE OF ACTION (RAHIM KIA)

#### 22 **FRAUD**

23 29. Plaintiff Laylia Kia incorporates all above allegations herein by reference.  
24

25 30. Plaintiff contends that beginning on or about 2008, the Defendant orchestrated and  
26 executed a continuous scheme to defraud the Plaintiff and obtain money from the Plaintiff based  
27 on the plan that the Plaintiff could and would obtain money from her family friend Reza Valliye  
28 in order to help her children if Defendant asked. In this case, under the false premise that the

1 money he would borrow would be for the benefit of the daughter and that he Rahim Kia would  
2 immediately repay the Plaintiff when he returned to the US. In fact, Rahim Kia never intended to  
3 repay the loans and only made the representations as a means to trick the Plaintiff into using her  
4 close relationship with Mr. Valliyee to get her to get money for him. When Plaintiff made her  
5 best effort to get the money back from the Defendant so she could repay her debt to Mr.  
6 Valliyee, Mr. Kia generated a false document he entitled "Sale Contract." In the document,  
7 which both parties signed and executed here in California and where Mr. Kia affixed his State of  
8 California Professional Engineer seal and it professes that he is selling a piece of property in  
9 Dubai to her and that she has paid "\$90,000 already as down and shall pay as much as she can in  
10 the future." Plaintiff was ignorant of the nature of the document and relied on his presentations  
11 that the document was his promise to repay the money he borrowed for the daughter and the son  
12 and for Rahim Kia's other personal uses.

13  
14  
15 31. Defendant knew at the time he made the representation to repay the money and that the  
16 money he was borrowing was for the benefit of the children was a false statement. Defendant  
17 represented that he had the present ability to repay the money as his consulting business was  
18 profitable and Defendant also knew that he had no intentions of selling the property in Dubai and  
19 had no intentions of returning the money he obtained from the Plaintiff by trick and  
20 misrepresentations. Defendant made the statement in an effort to deceive the Plaintiff and to trick  
21 her into obtaining money from her friend Mr. Valliyee. Defendant has a longstanding grudge  
22 against Mr. Valliyee and believes that Mr. Valliyee is the cause of his failed marriage and that  
23 the Plaintiff is the cause of every other problem in his life. Defendant believes that the Plaintiff  
24 has shamed his name and his family.

25  
26 32. Plaintiff relied to her detriment on the representations by the Defendant that the money  
27 would be repaid because the Defendant asserted he was helping their children and that the  
28

1 Plaintiff had a duty to help him help the children. Given her state of mind and relationship with  
2 the Defendant and history of abuse, the reliance was reasonable as she had little or no ability to  
3 make her decisions absent the state of fear.

4  
5 33. As a result of the above facts and misrepresentations of facts, Plaintiff suffered damages  
6 of at least \$ 90,000.00 or more.

7  
8 **FOURTH CAUSE OF ACTION (RAHIM KIA)**

9 **NEGLIGENT MISREPRESENTATION**

10 34. Plaintiff Laylia Kia incorporates all above allegations herein by reference.

11 35. Defendant made repeated representations to the Plaintiff that he had sufficient income to  
12 repay the money he was borrowing and that he would in fact repay the money. Defendant  
13 further presented to the Plaintiff that the money was for the benefit of their children and that after  
14 he failed to repay the money he borrowed from the Plaintiff that he would sell her and she would  
15 be the owner of the Dubai property. In fact, the Defendant never intended to repay the money  
16 and now alleges that he never had any income to pay the money back and alleges that he is  
17 retired and only has income of \$ 1000.00 per month. Furthermore, the Defendant actually denies  
18 he ever borrowed the money and denies he even made representations that he would repay the  
19 money.  
20  
21

22 36. Plaintiff relied upon Defendants representations that he had sufficient income and assets  
23 to repay the money he sought for the loans. Plaintiff relied upon his representations of his  
24 income and assets because Defendant had made reference to his consulting business, and its  
25 success in Iran and engaged and employed Plaintiff's nephew to assure the Plaintiff that the  
26 consulting business was successful and in fact generated sufficient income to the Defendant to  
27 support his repayment to the Plaintiff.  
28



1 37. As a result of Defendant's misrepresentations and misstatements of facts concerning his  
2 income and assets, Plaintiff borrowed money from her family friend to lend to Defendant.  
3 Defendant has failed and refuses to repay the Plaintiff and the Plaintiff is now indebted for at  
4 least \$ 90,000 or more to a third party as a result of the Defendant's misrepresentations of facts  
5 concerning his income and assets to obtain the loans.  
6

7 **FIFTH CAUSE OF ACTION (RAHIM KIA)**

8 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ADVANTAGE**

9  
10 38. Plaintiff Laylia Kia incorporates all above allegations herein by reference.

11 39. Plaintiff Laylia Kia had an economic relationship with CalPERS as a Qualified  
12 Beneficiary for health insurances services under the qualified retirement plan and health  
13 insurance benefits for retirees and their spouses ("The Plan").  
14

15 40. The Plan provided health insurance benefits for the Plaintiff and ERISA law and  
16 regulatory scheme provided that all participants are entitled to notices and notices of their rights  
17 under The Plan.

18 41. Defendant Rahim Kia had actual knowledge of Plaintiff's relationship with CalPERS and  
19 the provision for health insurance and rights to notices for COBRA coverage upon termination of  
20 participation in The Plan .  
21

22 42. Defendant by himself or by and through his agents, such as his daughter, Defendant acted  
23 to intentionally to disrupt the relationship between Plaintiff Laylia Kia and CalPERS as to Laylia  
24 Kia's access to information and notices concerning The Plan and her rights therein. Specifically,  
25 some of the acts by the Defendant, but not an exclusive list, include, Defendant obstructing or  
26 change the mailing address on the health insurance plan without notice to the Plaintiff and doing  
27 so with the intention that the Plaintiff not know the status of important developments concerning  
28 The Plan.

1 43. The above conduct was intentional.

2 44. Defendant intentionally interfered with Plaintiff's Prospective Advantage of her right to  
3 elect COBRA coverage within 14 days of CalPERS receiving notice of a qualifying event. To the  
4 extent that Plaintiff has lost such rights, it is because the Defendant and or CalPERS interfered  
5 with her rights to receive notice to seek such election.  
6

7 45. Defendant actually disrupted the relationship between Plaintiff Kia and CalPERS  
8 regarding The Plan by changing the mailing address of for all notices regarding The Plan and by  
9 failing to provide sufficient information to the Plaintiff to enable her to protect her rights going  
10 back to October 2001.  
11

12 46. Defendant's action caused and continued to cause Plaintiff Kia substantial economic  
13 harm and disruption in her ability to seek affordable health insurance converge. Plaintiff  
14 contends the actions of the Defendant Kia were intentional and thus subject to punitive damages  
15 of no less than \$ 500,000.00.  
16

17 **SIXTH CAUSE OF ACTION (RAHIM KIA)**

18 **Negligent Interference with Prospective Advantage**

19 47. Plaintiff Laylia Kia incorporates all above allegations herein by reference.  
20

21 48. Plaintiff Laylia Kia had an economic relationship with CalPERS as a Qualified  
22 Beneficiary for health insurances services under the qualified retirement plan and health  
23 insurance benefits for retirees and their spouses ("The Plan").

24 49. The Plan provided health insurance benefits for the Plaintiff and ERISA law and  
25 regulatory scheme provided that all participants are entitled to notices and notices of their rights  
26 under The Plan.  
27  
28

1 50. Defendant Rahim Kia had actual knowledge of Plaintiff's relationship with CalPERS and  
2 the provision for health insurance and rights to notices for COBRA coverage upon termination of  
3 participation in The Plan .

4  
5 51. Defendant by himself or by and through his agents, such as his daughter, Defendant acted  
6 with gross disregard for the rights of the Plaintiff and negligently disrupted the relationship  
7 between Plaintiff Laylia Kia and CalPERS as to Laylia Kia's access to information and notices  
8 concerning The Plan and her rights therein. Specifically, some of the acts by the Defendant, but  
9 not an exclusive list, include, Defendant obstructing or change the mailing address on the health  
10 insurance plan without notice to the Plaintiff and doing so with the intention that the Plaintiff not  
11 know the status of important developments concerning The Plan.

12  
13 52. Defendant negligently interfered with Plaintiff's Prospective Advantage of her right to  
14 elect COBRA coverage within 14 days of CalPERS receiving notice of a qualifying event. To the  
15 extent that Plaintiff has lost such rights, it is because the Defendant and or CalPERS interfered  
16 with her rights to receive notice to seek such election.

17  
18 53. Defendant actually disrupted the relationship between Plaintiff Kia and CalPERS  
19 regarding The Plan by changing the mailing address of for all notices regarding The Plan and by  
20 failing to provide sufficient information to the Plaintiff to enable her to protect her rights going  
21 back to October 2001.

22  
23 54. Defendant's action caused and continued to cause Plaintiff Kia substantial economic  
24 harm and disruption in her ability to seek affordable health insurance converge.

25 **SEVENTH CAUSE OF ACTION (ALL DEFENDANTS )**

26 **REQUEST FOR DECLARATORY RELIEF-HOLD HARMLESS**

27  
28 55. Plaintiff Laylia Kia incorporates all above allegations herein by reference.



1 56. Plaintiff Laylia Kia never received any initial or subsequent notice of her rights under  
2 The Plan and no initial notices providing for notice requirements by the employee or a qualified  
3 beneficiary of any Qualified Event. Defendant Rahim Kia received all notices, if any were sent  
4 by CalPERS and no such notices were sent to Plaintiff. To the extent that CalPERS alleges that  
5 it provided health insurance for Plaintiff from the period October 2001 forward when none was  
6 authorized or covered under the Plan and seeks reimbursement or offsets for any payments or  
7 claims that were made from that date forward should be the sole liability of the Defendant Rahim  
8 Kia and none as to Plaintiff Kia. Defendant CalPERS bears the burden to establish it provided  
9 the initial notices to the Plaintiff Kia. Plaintiff Kia was ignorant of any notices requirements,  
10 whereas Defendant Rahim Kia was in a superior position to have notice and receive notice of  
11 The Plan as he was the responsible employee under The Plan.  
12

14 57. Defendant CalPERS' potential claims for restitution or reimbursement from Plaintiff  
15 and or any third party claims for reimbursements for rejected insurance claims or Defendant  
16 Rahim Kia should pay reversed insurance payments.  
17

#### 18 PRAYER FOR RELIEF


19 WHEREFORE Plaintiff requests that this Court:

- 20 1. As to Defendant CalPERS, award statutory damages according to 29 U.S.C. § 1132 at a  
21 rate of \$ 110.00 per day since the notices became due in 1987 and continuing until  
22 present.
- 23 2. Damages according to proof for emotional distress and injury caused by Defendant  
24 Rahim Kia's conduct;
- 25 3. Restoration of Plaintiff's right to elect COBRA notice within 14 days of CalPERS  
26 learning of a Qualified Event and payments for all medical expenses that would have  
27 been covered under COBRA coverage;  
28

- 1 4. Declaratory relief holding affirming and holding Plaintiff harmless from any claims of  
2 fraud and restitution by CalPERS as to Rahim Kia for his failure to notify CalPERS of  
3 the October 2001 Qualified Event of the dissolution.  
4
- 5 5. Damages according to proof for any other damages attributed to Defendant's Kia's  
6 conduct including damages of at least \$ 90,00 for the money Defendant obtained from  
7 Plaintiff;  
8
- 9 6. Award Plaintiff attorney fees and reasonable costs pursuant to 29 U.S.C. § 1132 et seq for  
10 ERISA violations and  
11
- 12 7. Award any other relief that this Court deems just and equitable in the interest of justice.

13 Dated: Oakland, California

14 October 15, 2012

15 

16 **R. Mitchell**  
17 **Attorney at Law**  
18 **Attorney for Plaintiff**  
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**EXHIBIT A**

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BEN KAUFMAN

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ALLAN R. FRUMKIN, ESQ. (SBN 50543)  
 CAROLYN N. PETTIFER, ESQ. (SBN 245810)  
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Telephone Number: (925) 355-1555

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Attorneys for Respondent

LAILA KIA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF YOLO

In re The Marriage of:	) Case No. FL98-1858
Petitioner: RAHIM KIA	) DECLARATION OF DR. BENJAMIN
	) KAUFMAN, M.D.
v	)
Respondent: LAILA KIA	)

I, BENJAMIN KAUFMAN, M.D., declare as follows

1. I am the treating doctor for Laila Kia ("Respondent") and, if called to testify, I could and would testify competently to all matters described below.

2. Respondent has been my patient since 2003.

Underlying Relevant Facts

3. I am informed and believe and thereon allege the following:

- Respondent and Rahim Kia ("Petitioner") lived in Iran from 1979 to 1987 when they moved to Colorado. Petitioner took a teaching job at the Colorado State University.
- On December 31, 1988 Respondent gave birth to the parties' daughter, Denize. At about this time, Respondent – living under the coercive

Declaration of Benjamin Kaufman, M.D.

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1 shadow of Petitioner – started a daycare operation to add to the family  
2 income.

- 3 • At about this time, Petitioner began hitting and verbally assaulting  
4 Respondent during arguments because Petitioner wanted to return to Iran  
5 to start his own business and, Respondent wanted to stay in America.
- 6 • The family moved to the Sacramento-Davis area where Respondent  
7 operated a daycare center out of the Davis Athletic Club. Petitioner ran  
8 the health bar in that club.
- 9 • Respondent ran up the parties' credit debt deliberately to benefit from  
10 bankruptcy, before leaving to go to Iran with \$70,000 in cash advances.
- 11 • By 1998, Petitioner was back in Iran and Respondent and the two  
12 children remained in the United States. Respondent worked odd jobs,  
13 attended school and in 2008, she graduated from Sacramento State  
14 University.
- 15 • In about 2008, the parties' son, Sahand, developed a schizophrenic  
16 thought disorder to a severe degree requiring extensive attention,  
17 hospitalization and medication. Sahand remains disabled and house-  
18 bound.
- 19 • When Respondent was six months pregnant with Sahand, Petitioner  
20 struck Respondent. Respondent believes that blow induced her labor  
21 because Sahand was born three months premature weighing only 3.5  
22 pounds.
- 23 • Sahand was born in Iran during the Iran-Iraq war. The war affected the  
24 electricity supply to the hospital and, as a result, affected Sahand's care  
25 while he was in an incubator.
- 26 • Respondent is now certified as a disabled person and is suffering from  
27 deteriorating health. Prospects for her employment are not good. She is  
28

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1 able to gather some part-time work but she has to care for her mentally-  
2 disabled son.

- 3 • Respondent is struggling financially whereas Petitioner's consulting  
4 service has resulted in his making multi-millions.
- 5 • Petitioner has gained the confidence of the parties' daughter, Denize,  
6 who, to Respondent's deep distress, has not been in contact with  
7 Respondent for a period of two years.

#### 8 History of Abuse

9 4. Respondent's psychiatric status is that of an abused and battered spouse. She  
10 is a deeply anxious person who is undergoing relentless stress internally and  
11 externally. She does not have a normal or natural relationship with her daughter and,  
12 she is the sole provider of care and support for her mentally disabled son who is the  
13 only person living with her.

14 5. Respondent's speech reflects the intensity of anxiety as she tries to explain the  
15 challenges of her life which have a strong cultural foundation. She is of quite high  
16 intelligence, with sound memory and fund of knowledge. She is forthright in answering  
17 questions, is able to express her thoughts well, which are free of any delusional  
18 content. She is not paranoid nor is she suicidal beyond expressing despair at some of  
19 the more challenging elements of her life.

20 6. Respondent experienced her marriage as a battered spouse of unequal stature  
21 before the law represented by her husband and the culture of Iran. Petitioner drilled  
22 into her mind: "You can't go to college;" "You don't have a brain for education;" "You  
23 cannot earn a degree;" "Quit dreaming and do your housewife chores and duties."

24 7. Respondent endured much physical, emotional and mental abuse by Petitioner  
25 who viewed Respondent as being subservient to him. Because, according to Iranian  
26 culture, Respondent was a second class citizen, she was not allowed to make any  
27 independent decision. Petitioner knew no boundaries with his abuse. Petitioner hit  
28 and verbally berated Respondent on many occasions in front of their children.

Declaration of Benjamin Kaufman, M.D.

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1 8. In 2008, Petitioner offered Respondent \$2,000 a month to move back to Iran  
2 and to work in his office. Respondent returned to Iran for a relative's wedding.  
3 Petitioner turned her away when she went to him for financial assistance.

4 9. When Respondent attempted to return to the United States following the  
5 wedding, Petitioner put a stop to her exit Visa. In Iran, husbands have the ability to do  
6 that and Petitioner stopped Respondent from boarding her plane back to the United  
7 States. Respondent was actually pulled out of the boarding line by security guards.

8 10. Respondent first entered counseling from 2001 until 2003 when she became my  
9 patient.

10 11. The diagnosis I proffer is generalized stress-anxiety disorder based on chronic  
11 stress deriving from marital-familial/cultural failures and disappointments.

12 12. The most recent visit to me in the office before Respondent moved to Berkeley  
13 was in 2010. Since then I have maintained telephone contact with her (up to and  
14 including March 26, 2012) and, I continue to prescribe the medications described  
15 below. She has never been known to me to take excessive medication or used any  
16 inappropriately:

- 17 • Adderal XR 20 mg, 4 tabs per day;
- 18 • Prozac 20 mg, one tab daily;
- 19 • Xanax 0.5 mg up to 4 tabs daily.

20 13. Respondent has sleep disturbances, nightmares including distressing arousal  
21 over normal. She has difficulty with recall and is hyper vigilant. She has  
22 interrelationship difficulties that stem entirely from the events described above. Her  
23 mental state remains chronic and is essentially unremitting in terms of general anxiety.  
24 Because of her sleep disorder she can be irritable and hyper aroused associated with  
25 intense fear and a sense of helplessness.

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Declaration of Benjamin Kaufman, M.D.

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1 I declare under penalty of perjury under the laws of the State of California that  
2 the foregoing is true and correct except as to those matters stated upon information  
3 and belief, and as to those matters, I believe them to be true.

4 Executed in Sacramento Ca on 4/2/12, 2012.

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7   
8 BENJAMIN KAUFMAN, M.D.

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Signature by  
facsimile